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OCT 28 1997

James C. Codell, III
Secretary of Transportation

Commonwealth of Kentucky
Transportation Cabinet
Frankfort, Kentucky 40622

Paul E. Patton
Governor

T. Kevin Flanery
Deputy Secretary

October 27, 1997

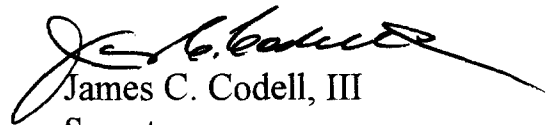
Office of the Secretary
Federal Communications Commission
Washington, D. C. 20554

Subject: MM Docket No. 97-182 (Comments)

To Whom It May Concern:

The Kentucky Transportation Cabinet strongly objects to the proposed rule making in the reference docket. See the attachment for specific information requested in Section IV of the docket.

Sincerely,


James C. Codell, III
Secretary

Attachment

JCC/TKF/JLC/RJB/mds





Kentucky Airport Zoning Commission
125 Holmes Street
Frankfort, Kentucky 40622

Tel - 564-4480
FAX - 564-7953

ATTACHMENT

Office of the Secretary
Federal Communications Commission
Washington DC 20554

RE: MM Docket No. 97-182 (Comments)

I. INTRODUCTION

1. These comments deal specifically with the Kentucky Airport Zoning Commission (KAZC), a state level board within the Kentucky Transportation Cabinet which reviews proposals to erect structures which may affect the safety of persons and property, both in the air and on the ground, across the state and in the vicinity of publicly-owned airports within the Commonwealth of Kentucky.

2. The FAA Act of 1958 established FAR Part 77 giving the FAA authority to study proposed erection of objects in navigable airspace in an effort to increase aviation safety and to protect the billions of tax-payer dollars in the national airspace system. This Act gave the FAA no legal power and left enforcement up to state and local authorities. In 1960 the Kentucky legislature created the KAZC with legal authority to enforce orders issued.

3. The KAZC has essentially the same jurisdiction the FAA has for airspace matters, limited to publicly-owned airports within Kentucky. An application to construct or alter a structure within KAZC jurisdiction must be submitted and studied then a permit is issued. Part of the study is a 30 day comment period during which interested parties may submit comments pertaining to the proposal with regard to aviation. The entire process takes usually 90 days or less.

II. COMMENTS

1. Anything less than 90 days will not allow owners and operators of airports and others with aviation interests to respond to a comment request. In the experience of the KAZC Administrator, the vast majority of permit applications are completed within 90 days for those sites which are properly engineered.

2. No mention is made as to whether this proposed preemption is permanent or to terminate after 2006. Should preemption be ruled, there should be a future date set at which time state and local zoning be given their powers back to control antenna tower construction.

3. The petitioners' proposal describes the proposed construction as "broadcast transmission facilities". Is this limited to the "DTV" industry or all antenna towers? Any preemption should be limited to the construction of "DTV" broadcast antenna towers.

4. The Cincinnati market is the only one of the top thirty which impacts Kentucky. It would not be proper to adversely affect the state and local zoning authority throughout the entire state of Kentucky when a relatively small portion of the state's territory is involved with the main concept of this proposal. Should preemption be ruled, it should be limited to the top thirty markets, or better yet, the top ten markets.

5. The petitioners' proposal indicates that structures will be marked and lighted in accordance with the FAA. There was no mention of the method which will be used if the FAA determines a structure to be a hazard to aviation, has adverse effects on aircraft landing systems, has adverse effects on navigation facilities and radar or has a non-hazardous effect on flight procedures which adversely effects the operations or economy of an airport. Remember, the FAA has no enforcement powers. State and local authorities, which zone for aviation reasons should not be preempted.

III. SUMMARY

Preemption should not be used over those state and local authorities which perform an aviation zoning safety function. Should preemption be ruled, consideration needs to be given to limiting preempted structures to "DTV" towers only and to eliminating the preemption ability of the FCC at some future date after the DTV buildout. Limit the preemption to the top ten or thirty markets. Care should be taken that the airspace system of the US is not sacrificed for the DTV buildout.

MM97-182



**Air
Traffic
Control
Association, Inc.**

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OCT 28 1997

FCC MAIL ROOM

Suite 711
2300 Clarendon Boulevard
Arlington, Virginia 22201

Telephone: (703) 522-5717
FAX: (703) 527-7251

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October 24, 1997

Office of the Secretary
Federal Communications Commission
1919 M Street, NW
Washington, D.C. 20554

Attention: Docket No. FCC 97-182

To Whom it May Concern:

Reference: Aircraft Owners and Pilots Association (AOPA) response to notice of proposed rule making (NPRM) "Pre-emption of state and local zone and land use restrictions on the siting, placement, and construction of broadcast transmission facilities.

The Air Traffic Control Association, Inc. (ATCA) strongly endorses AOPA's comments on the referenced NPRM. ATCA is a professional organization of national and international stature dedicated to the Progress of Science in Air Traffic Control and for the Preservation of Flight Safety.

In the docket being addressed, our principal concern is for flight safety. The Congress, the Department of Transportation and the FAA endeavors to enhance flight safety by whatever means possible.

As indicated by the AOPA, the erection of potential obstruction hazards to aviation are processed in accordance with (FAR) Part 77 CFR 14. It is a process that works.

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The proposed NPRM appears to be not about RFI or spurious emissions that affect other radio frequencies or create an unhealthy atmosphere. It is about metal obstructions penetrating the fly-ways.

It is recognized that the reasons cited for accelerating the introduction of DTV is an important national economy issue. However, such action does not seem to reflect a sense of urgency where responsibilities of state and local authorities should be pre-empted when such actions introduce the potential of compromise to flight safety.

Respectfully,

A handwritten signature in black ink, appearing to read "Gabriel A. Hartl", written in a cursive style.

Gabriel A. Hartl

President

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

October 22, 1997

DOCKET FILE COPY ORIGINAL

Honorable Senator Bob Graham
Honorable Senator Connie Mack
Honorable Congressman Joe Scarborough

RE: Proposed FCC Rule (MM Docket #97-182 Preemption of State
and Local Zoning)

Dear Senator Graham, Senator Mack and/or Congressman Scarborough:


I enclose a copy of a letter from the Experimental Aircraft Association at Oshkosh, WI which was forwarded to the President of Chapter 108 EAA located in Okaloosa County, Florida. Our Chapter is comprised of approximately 80 aviation enthusiasts, many of whom own airplanes.

As you will note from the letter, the FCC is proposing to preempt State and local government land use regulation as respects the construction of broadcast station towers.

Having recently been involved in a lengthy battle which culminated in a refusal by local authorities to permit construction of a 1100 foot tower near a major fly-way in our County, our Chapter is most definitely opposed to FCC Preemption. I can't imagine a more egregious impingement upon State sovereignty as respects control or utilization of real property within a State's boundaries.

In behalf of our local Chapter, I sincerely urge you to oppose the referenced FCC proposal.

Sincerely,


LAWRENCE P. BUSH

LPB;mjr

cc: All Okaloosa County Commissioners
Jerry Melvin
Durell Peden
Office of Secretary FCC

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EAA AVIATION CENTER
P.O. BOX 3086
OSHKOSH, WI 54903-3086

PHONE 920-426-4800
FAX 920-426-4873

September 29, 1997

Dear Chapter President:

I am writing to ask for help in preventing a proposed Federal Communications Commission (FCC) rule that will not only be a danger to aviation safety, but also allow the federal government to take away the zoning authority of your town, city, county and state.

I ask you and the members of your Chapter to contact your local zoning authorities, mayors, city managers, governors, state and federal congressmen and inform them about this FCC proposal. What is needed are letters in opposition to the proposal from these leaders. The affect of letters from local, state and federal leaders will be much greater than letters from individual citizens.

The FCC proposal is MM Docket No. 97-182 Preemption of State and Local Zoning and Land Use Restrictions on the Citing, Placement and Construction of Broadcast Station Transmission Facilities. The FCC is considering whether, and in what circumstances, to preempt certain state and local zoning and land use ordinances that present an obstacle to the rapid implementation of digital television service. The proposal states:

“(1) No state or local government or instrumentality thereof may deny a request to place, construct, or modify a broadcast antenna facility on the basis of:

- (i) the environmental or health effects of radio frequency emissions to the extent that such facility has been determined by the Commission to comply with the Commission’s regulations and/or policies concerning such emissions;
- (ii) interference effects on existing or potential telecommunications providers, end users, broadcasters, or third parties to the extent that such facility has been determined by the Commission to comply with the Commission’s regulations and/or policies concerning interference;
- (iii) Lighting, painting, and marking requirements, to the extent that the facility has been determined by the FAA or the Commission to comply with applicable FAA and Commission regulations and/or policies regarding tower lighting, painting and marking;

(2) Any state or local land-use, building, or similar law, rule or regulation that impairs the ability of federally authorized radio or television operators to place, construct, or modify

broadcast transmission facilities, is preempted unless the promulgating authority can demonstrate that such regulation is reasonable”

The FCC proposal would also require that if the local authority wants to object to the construction, it must do so within 21 to 45 days of application, depending on the situation, or the construction can proceed. If the local authority does not know about the proposed construction or takes time to respond, it may not be able to prevent its construction.

It can certainly be taken for granted that the broadcasters will take advantage of this proposal to proceed with a tower construction campaign the likes of which has never been seen before. Local zoning laws will provide no protection from the construction of towers, hundreds and even thousands of feet in height in your neighborhood and or near your airport.

An example, of how this proposal could affect you is a tower that EAA and local governments have spent over 10 years working to prevent its construction. The tower is a 1,700 AGL tower south of Oshkosh, in a corridor in which all arriving VFR convention traffic would be required to pass by on the way to and from the EAA Convention. This tower would be built over the objections of EAA and local and state officials, creating a significant hazard to flight safety.

However, this is not just an aviation issue. This proposed rule will allow towers to be built next to existing residential subdivisions over the objection of the community. Let your local leaders know that a tower could be built in **their** back yard.

Comments on this proposal may be filed on or before October 30, 1997. Comments should be sent to Office of Secretary, Federal Communications Commission, Washington, D.C. 20554. For additional information on this proposal, you may contact Keith Larson, Assistant Bureau Chief for Engineering or Susanna Zwerling, Policy and Rules Division, Mass Media Bureau at (202) 418-2140.

Help EAA prevent this rule change. Contact your local officials, educate them on the proposal, ensure that they write in objection to losing their zoning authority.

Sincerely,
EXPERIMENTAL AIRCRAFT ASSOCIATION



Earl Lawrence
Director, Government Programs

Dubuque Regional Airport



11000 Airport Road → Dubuque, Iowa 52003-9555 → 319-589-4128 → Fax 319-589-4108

Airport Manager
Kenneth J. Kraemer, A.A.E.

Airport Commission
Tom Baldwin • Doug Brotherton • Paul Frommelt
Mary Gromen • John Markham

MM 97-182

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October 23, 1997

DOCKET FILE COPY ORIGINAL OCT 28 1997

FCC MAIL ROOM

Federal Communications Commission
FCC Dockets Branch
Room 239
Docket No. 97-296
1919 M Street, NW
Washington, DC 20554

Re: NPRM [FCC 97-296]

Gentlemen:

It has come to my attention that the Federal Communications Commission (FCC) is proposing that any state or local zoning ordinance would be preempted if the FCC determines these zoning ordinances interfere with the installation of certain broadcast facilities.

This Notice of Proposed Rule-Making (NPRM) is important to the Dubuque Regional Airport because it will, if allowed to pass, grant the FCC authority to preempt zoning laws and provides no exception to this authority for ordinances in place to prevent construction of large structures in the vicinity of our airport.

I understand that developers of digital television (DTV) believe that state and local zonings laws are an obstacle to the accelerated implementation schedule the FCC has set for the construction of 1,000-foot antenna towers that are necessary to broadcast the new signal. These DTV developers have petitioned for this rule-making to allow the FCC the authority to preempt any zoning laws that may interfere with the rapid implementation of DTV.

While the proposed rule will require compliance with FAA obstruction-lighting requirements, no further mention of the potential hazard to aviation is contained in the NPRM. Many communities nationwide, including Dubuque, use zoning laws to prevent construction of tall buildings and other structures near an airport. There is no other recognition in the proposal that often the only means to prohibit construction of obstacles near airports are the very state and local zoning ordinances the proposal will allow the FCC to preempt.

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The Dubuque Regional Airport is extremely concerned that the FCC proposes to remove the authority for state and local governments to determine what sites are suitable for the construction of 1,000-foot DTV towers. **Any proposal to usurp local zoning laws near airports compromises the safety of all aviation operations.** Without specific procedures in place to protect the safety of all aviation activities near airports, the FCC jeopardizes the Federal Aviation Administration's ability to effectively manage traffic at airports and deteriorates the ability of the airport industry and the FAA to provide safe air transportation.

The Dubuque Regional Airport requests that the FCC require all DTV developers to adhere to all zoning laws enacted to prohibit construction of these structures near airports. Please do not compromise aviation safety for the sake of rapid implementation of digital television.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'K.J. Kraemer', with a stylized, flowing script.

Kenneth J. Kraemer, A.A.E.
Airport Manager

cc: U.S. Senator Chuck Grassley
U.S. Senator Tom Harkin
U.S. Congressman Jim Nussle

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OCT 28 1997

FCC MAIL ROOM



STATE OF VERMONT
MICHAEL J. OBUCHOWSKI
SPEAKER
HOUSE OF REPRESENTATIVES
MONTPELIER, VERMONT
05633-5201

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E-MAIL ADDRESS:
SPEAKER@LEG.STATE.VT.US

TEL: 802-828-2245
FAX: 802-828-2220

27 October 1997

Secretary
Federal Communications Commission
1919 M Street NW
Washington, DC 20554

Dear Secretary, FCC:

I wish to register my support for the efforts of the Thistle Hill Neighborhood Alliance of Marshfield, Vermont, as that group seeks to retain local jurisdiction and decision-making over proposals for communications towers on local mountain tops.

I strongly oppose efforts by any private communications enterprise, association representing such interests, or the Federal Communications Commission to pre-empt the rights of the states and localities in this matter. The state of Vermont has spent many years developing statutory and regulatory environmental protections on both the state and local level, and we will support retention of these protections and local decision-making.

Thank you for entering my remarks in the record relating to MM Docket No. 97-182.

Regards,

Mike Obuchowski (tr)

Michael J. Obuchowski
Speaker, House of Representatives

MJO/bfa

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Tulip City Air Service, Inc.

1581 South Washington Ave.
Holland, Michigan 49423
Ph: (616) 392-7831



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OCT 28 1997

FCC MAIL ROOM

Federal Communications Commission
FCC Dockets Branch
Room 239
Docket No. 97-296
1919 M Street, NW
Washington, DC 20554

To whom it may concern:

The FCC is currently examining a proposal (Docket No. 97-296) which would remove the authority for state and local governments to determine what sites are suitable for the construction of 1,000 foot DTV towers. Any proposal to usurp the local zoning laws near airports compromises the safety of ALL AVIATION OPERATIONS. Without specific procedures in place to protect the safety of aviation activities near airports, the FCC jeopardizes the FAA's ability to effectively manage traffic at airports.

Furthermore, the bureaucracy necessary to properly survey and police the safe and efficient placement of such towers will be astronomical. So astronomical, in fact that it will not be done at all. It is for this reason that such decisions should remain at the local level of government. Only the local population and local government, with their intimate knowledge of the their area socially and geographically can make such decisions; decisions which will effect the local population, local aviation, local property values... The list goes on and on.

Please seriously consider leaving the power to make these decisions where it is; with the local governments.

Sincerely,

Cory Senti
Chief Pilot

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Tulip City Air Service, Inc.

1581 South Washington Ave.
Holland, Michigan 49423
Ph: (616) 392-7831

*Tulip City
Executive Express*



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FCC Dockets Branch
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Docket No. 97-296
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Please seriously consider leaving the power to make these decisions where it is; with the local governments.

Sincerely,

Ron Ludema
President

Handwritten note: 0